In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-42773 of 2007

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Date of decision:30.8.2007

Paramjit Singh Walia

…..Petitioner

v.

State of Punjab

…..Respondent

…..

Present: Mr. R.S. Ghuman, Advocate for the petitioner.

Mr. I.P.S. Sidhu, Senior Deputy Advocate General, Punjab for the respondent-State.

Mr. Rajiv Sharma, Advocate for the complainant.

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S.S. Saron, J.

Heard learned counsel for the parties.

The petitioner seeks pre-arrest bail in a case registered against him for the offences under Sections 420, 467, 468, 471, 457 and 120-B IPC at Police Station Salem Tabri, District Ludhiana on the complaint of Shri Amarjit Singh, Deputy Commissioner, Central Excise Division III, Ludhiana (complainant). An application was submitted by the complainant for registration of a case against the petitioner, who is Managing Partner of M/s Walia Bus Service, G.T. Road, Phagwara and his accomplices. It is submitted that M/s Swastika Knitting and Spinning Mills near Jalandhar Bye-Pass, Ludhiana was in arrears of central excise duty to the tune of Rs.28,40,122/-. The property of M/s Swastika Knitting and Spinning Mills measuring 8 Kanals bearing M.C. No.B-XXXIII-330, G.T. Road near

Jalandhar Bye-Pass, Ludhiana was owned by its partner Shri Jagir Raj Sahnan and Kailash Chander Saggar. It was attached by the complainant-Department through the revenue authorities. Locks were put and the premises were sealed by the Department for the recovery of its dues. Entry No.13 dated 6.6.2003 (Annexure-P.1) regarding the attachment of the property was recorded in the name of the Commissioner, Central Excise, Chandigarh. Later on the entry was got corrected by an order of the Tehsildar, Ludhiana (West) in the name of Commissioner, Central Excise, Ludhiana vide report No.899 dated 25.7.2003. Both the entries were recorded in the Roznamcha of the Halqa Patwari.

The complainant came to know through specific information that somebody had trespassed into the said property which was in peaceful and lawful possession of the complainant-Department. The trespasser was going to cause damage to the property. The seals of the Department had been broken/removed and signboard was also changed at the premises. After thorough investigation, it came to the knowledge of the Department that the petitioner, who is Managing Partner of M/s Walia Bus Service and his accomplices had encroached upon the property illegally by breaking open the locks put by the Department with an intention to cause harm to the Department. The accused were requested to vacate the premises as it belongs to the complainant-Department. However, they refused to accede to their genuine request. The accused, it was alleged, had trespassed into the premises of the complainant-Department intentionally, willfully and knowingly with an ulterior motive to cause harm to it and to cause loss to the Department. The accused had no concern or connection whatsoever

with the premises. It was, therefore, prayed for taking action.

The case of the petitioner is that possession of the property was never taken by the Central Excise Department and the recording of the report on 6.6.2003 (Annexure-P.1) and the subsequent report on 25.7.2003 do not amount to attachment of the property. The property in question it is alleged was with one Parshan Singh son of Lachhman Singh since 31.1.2002. It is submitted that on 31.1.2002 an agreement to sell was executed in favour of Parshan Singh by Jagir Raj Sahnan-the owner. The possession of the land was delivered to Parshan Singh on 25.2.2002. Said Parshan Singh entered into an agreement to sell in favour of the petitioner on 3.2.2007 and earnest money of Rs.20 Lacs was given and possession was delivered to him. After the agreement to sell dated 3.2.2007, it transpired that the property had been mortgaged in favour of Indian Bank, Clock Tower, Ludhiana (`Bank' – for short) much prior to the date when the agreement to sell dated 31.1.2002 was executed by Jagir Raj Sahnan in favour of Parshan Singh. The Bank had also filed a suit for recovery of the amount which was pending before the Debt Recovery Tribunal at Chandigarh.

The property had been in fact attached for the recovery of excise duty amounting to Rs.28,40,122/- from the deceased Jagir Raj Sahnan. These facts were in the knowledge of Kailash Chander Saggar, who was the legal heir of Jagir Raj Sahnan, as he was also the marginal witness of the agreement dated 31.2.2002. Parshan Singh had concealed the factum of encumbrance and attachment from the petitioner at the time of execution of the agreement to sell dated 3.2.2002. It is submitted that

Kailash Chander Saggar and Parshan Singh colluded with each other and played fraud with the petitioner to the tune of Rs.20 Lacs. The petitioner has filed a suit for mandatory injunction against Parshan Singh, Kailash Chander Saggar and his wife Smt. Shashi Saggar on 10.3.2007 in the Civil Court at Ludhiana seeking directions to the defendant to redeem their mortgage existing over the suit property consisting of factory, land and built on plot measuring 4100 sq. yards as entered in the Jamabandi for the year 1999-2000 situated at Village Bhaura, Ludhiana bearing Municipal No.B-XXXIII-330, G.T. Road (West) near Bye-Pass, Ludhiana and also directing defendants No.2 and 3 to procure and hand over plaintiff TS-1 (Extract of House Tax Assessment Register) in their names from the Municipal Corporation, Ludhiana and also procure Jamabandi from the revenue authority for getting the sale deed executed. A further prayer was made for restraining defendants No.1 and 2 from interfering in any manner in the peaceful possession of the plaintiff (petitioner) of the suit property or from forcibly dispossessing him. A still further prayer was made for restraining the defendants from alienating the suit property. It is submitted the stay from dispossession had been granted to the petitioner on 13.3.2007 (Annexure-P.3). Defendant No.1 in the suit i.e. Parshan Singh had been restrained from dispossessing the plaintiff from the suit property illegally and forcibly and also restrained from alienating the suit property. It is thereafter that the officials of the Central Excise Department approached the petitioner and represented that the suit property is in possession of the Commissioner, Central Excise, Ludhiana and the petitioner should hand over possession of the same. The petitioner requested them to produce legal

documents but they could not substantiate their claim. It is contended that Rapat Roznamcha dated 6.6.2003 (Annexure-P.1) is merely a document of attachment and does not show that possession of the property was taken by the Excise Department. The officials of the department have failed to produce any legal document to show their possession. The petitioner apprehending that he would be dispossessed from the property in question filed a suit on 7.4.2007 (Annexure-P.4) for permanent injunction restraining the defendants from interfering in his peaceful possession. Thereafter, the impugned FIR has been registered. In fact, no offence whatsoever has been committed by the petitioner.

Learned counsel appearing for the State has opposed the application and submitted that the petitioner is wanted in the case. It is submitted that he is instrumental in attempting to grab the property which was attached through the Commissioner, Central Excise, Ludhiana for recovery of arrears of tax. It is further submitted that the identity of the witnesses who attested various documents is to be determined. A list of cases that are registered against the petitioner has also been submitted and it is stated that five cases are registered against the petitioner regarding taking possession.

After considering the contentions of the respective counsel and perusing the records of the case, it may be noticed that the FIR has been registered on the complaint of Deputy Commissioner, Central Excise, Ludhiana. The property of M/s Swastika Knitting and Spinning Mills was attached for recovery of excise duty. The said property was owned by Jagir Raj Sahnan and Kailash Chander Saggar. The attachment was made and

report Roznamcha was recorded on 6.6.2003 (Annexure-P.1) in the name of Commissioner, Central Excise, Chandigarh. It was changed in the name of Commissioner, Central Excise, Ludhiana vide subsequent report dated 25.7.2003. The complainant came to know of the trespass of the land by the petitioner and thereafter, the FIR has been registered. The claim of the petitioner is that he is in possession of the property in terms of an agreement to purchase entered into by him vide agreement dated 3.2.2007. The said agreement was entered into by the petitioner with Parshan Singh and a sum of Rs.20 Lacs is stated to have been paid as earnest money. The said Parshan Singh had got the property in pursuance of an agreement to sell dated 31.1.2002 executed by Jagir Raj Sahnan. Possession was delivered to Parshan Singh on 25.2.2002. Jagir Raj Sahnan died on 9.12.2004. Jagir Sahnan had during his life time executed a Will dated 8.6.2001 in terms of which the property was bequeathed to Kailash Chander Saggar and his wife Smt. Shashi Saggar in equal share. A perusal of the pleadings in the suit (Annexure-P.4) filed by the petitioner, shows that in the agreement of sale dated 31.1.2002 executed by Jagir Raj Sahnan and also in the subsequent agreement dated 3.2.2007 executed by Parshan Singh it had been stated that the suit property was free from all encumbrances. However, it transpired that the suit property had been mortgaged in favour of Indian Bank, Clock Tower, Ludhiana much prior to the agreement to sell dated 31.1.2002. The said Bank had also filed a suit for recovery which was pending before the Debt Recovery Tribunal, Chandigarh. Besides, the suit property also stood attached for the recovery of Rs.28,40,122/- from the deceased Jagir Raj Sahnan. It may be noticed that the property in question was taken in

possession by recording Roznamcha on 6.6.2003. The case of the petitioner that it was merely a paper transaction is not tenable. A perusal of the report dated 6.6.2003 (Annexure-P.1) shows that in terms of the order passed by the Tehsildar proceedings regarding attachment were carried out at Village Bhaura, Tehsil Ludhiana (West), District Ludhiana. Gurnam Singh, Area Patwari was present at the spot. The revenue record was perused and as per attachment order of the Collector, Ludhiana the land in question was attached in lieu of recovery of Rs.1,15,71,870/-. `Mustari Munadi' was done by beat of drum. The act of going to the spot and making a declaration by beat of drum (Munadi) or otherwise is sufficient to constitute attachment of the property. The officials of the Department along with Patwari Halqa were at the spot and the necessary proceedings for attachment were carried out. The Jamabandi for the year 2004-05 which has been produced shows that in the remarks column in respect of the land in question it is mentioned that vide report No.13 dated 6.6.2003 (Annexure-P.1) the land measuring 7 Kanals 10 Marlas in respect of Subhash Chander, Bihari Lal, Chanan Singh, Ram Krishan, Kirti sons of Madan Gopal, Jagir Raj son of Narain Dass, Charanjit Kumar, Surinder Kumar, Sheela Devi had already been attached with the C.C.E., Chandigarh for a sum of Rs.1,15,71,870/-. It is also recorded that vide report No.889 dated 25.7.2003 the attachment had been made with C.C.E., Ludhiana instead of C.C.E., Chandigarh. Strong reliance has been placed by the learned counsel that Jagir Raj, who was owner of the property had by agreement dated 31.1.2002 agreed to sell the land to Parshan Singh. Thereafter, Parshan Singh on the basis of agreement to purchase dated 31.1.2002 had entered into an agreement with the petitioner

on 3.2.2007. The case of the petitioner is that possession of the land was delivered to him on payment of Rs.20 Lacs as earnest money. The sale was to be executed upto 2.4.2007. It was recited in the agreement by Parshan Singh that he had agreed to purchase the land from Jagir Raj who was also attorney of other owners. Besides, the land was free of any kind of encumbrances. The fact that the possession was delivered to Parshan Singh in pursuance of the agreement dated 31.1.2002 and in pursuance of the receipt dated 25.2.2002 is not tenable. It may be noticed that the petitioner has stated that in terms of receipt dated 25.2.2002 that the possession of the land was delivered by Jagir Raj to Parshan Singh. However, a photostat copy of the receipt which has been produced shows that there is no signature of Jagir Raj/Jagir Lal on the receipt. Besides, if possession had been delivered, the same was liable to be recorded in Roznamcha Waqiati with the Halqa Patwari. Even otherwise it may be noticed that the agreement that was entered into between Parshan Singh and the petitioner is dated 3.2.2007. At that time Jamabandi of the year 2004-05 had been drawn up. In the remarks column of the same a reference has been made to report No.13 dated 6.6.2003 (Annexure-P.1) and report No.25 dated 25.7.2003 regarding change of the attachment from C.C.E., Chandigarh to C.C.E., Ludhiana. The said reports clearly show that the land has been attached with the Department of Central Excise. Therefore, not much reliance can be placed on the agreement dated 3.2.2007. It may also be noticed that the auction notice was published in the Tribune dated 26.3.2004 regarding auction of the land on 31.3.2004. The auction notice was issued by the Office of Assistant Commissioner, Central Excise, Division-III, Ludhiana.

Learned counsel has referred to the Ministry of Finance circular dated 15.12.1997 relating to sale of movable/immovable properties by Central Excise Officers for recovery of excise duty. It is submitted that there is violation of the said circular with regard to sale. A perusal of the said circular shows that Clause 6.1 provides for standard formats which is to be used for ordering attachment of movable/immovable properties which is given in Appendices-IIIA and IIIC and for preparing Panchnama is given in Appendices-IIIA and IIIC respectively. The said circular is in the nature of guide-lines for the officers and would not confer any legally enforceable right on the petitioner. Clause 6.4 inter alia envisages that in case there is a dispute relating to question of title or propriety between the authorized officer and any other person not being the defaulter who claims to be interested in such property by virtue of assignment, attachment or otherwise the same would have to be determined by the Court and not by the authorized officer. In the present case there is no dispute to the question of title as neither Parshan Singh has got any title in his favour in pursuance of the agreement dated 31.1.2002 and the receipt dated 25.2.2002. In the circumstances, he could not have conveyed a better title than he himself has to the petitioner. Therefore, there is no dispute of title involved which may require determination by the Court. The allegations against the petitioner of having trespassed into the property which was in possession of the Central Excise Department would not confer any right on him. Learned counsel for the State has submitted that the petitioner is involved in various other cases of taking possession. The following cases stand registered against him:-

"(1) FIR No.23 dated 23.3.1992 under Sections 448, 506, 148 and

149 IPC at Police Station City Phagwara.

(2) FIR No.10 dated 9.1.2000 under Sections 452, 448, 342, 323, 506, 148 and 149 IPC at Police Station City Hoshiarpur.

(3) FIR No.146 dated 18.9.2001 under Sections 353, 186, 427, 148 and 149 IPC at Police Station City Phagwara.

(4) FIR No.115 dated 12.6.1999 under Sections 323, 325 and 34 IPC at Police Station Sadar Phagwara.

(5) FIR No.244 dated 4.8.2007 under Sections 447, 511, 323 and 506 IPC at Police Station City Phagwara."

The copies of the FIRs have been submitted.

Keeping in view the nature of allegations and also the fact that the petitioner is alleged to have taken possession of the property attached with the Central Excise Department as also the fact that there are criminal cases registered against him, no case for grant of anticipatory bail is made out.

Consequently, the criminal miscellaneous petition is dismissed. However, in case the petitioner surrenders within five days from receipt of copy of this order, his application for regular bail shall be considered and disposed of by the concerned Court within five days thereafter.

August 30, 2007. **(S.S. Saron)**
Judge

hsp